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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re G.G., a Person Coming  
Under the Juvenile Court Law.

2d Juv. No. B271059  
(Super. Ct. No. 1461231)  
(Santa Barbara County)

SANTA BARBARA COUNTY  
DEPARTMENT OF SOCIAL  
SERVICES,

Plaintiff and Respondent,

v.

N.G.,

Defendant and Appellant.

N.G., the presumed father of G.G., appeals an order of the juvenile court terminating his parental rights to the child. (Welf. & Inst. Code, § 366.26, subd. (c)(1).)<sup>1</sup> N.G. argues the court

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

abused its discretion and denied him due process by refusing to conduct a contested hearing on the beneficial parental relationship exception to adoption. (§ 366.26, subd. (c)(1)(B)(i).) We affirm.

## FACTS AND PROCEDURAL BACKGROUND

The original referral in this case occurred when G.G.'s mother (mother) caused a disturbance at a Walmart. She displayed erratic behavior and appeared to be under the influence of drugs. Three-year-old G.G. was with her at the time. Mother was arrested for child cruelty and incarcerated. N.G., a transient without any verifiable income, was in a detox facility.

Mother identified another man, C.R., as G.G.'s biological father. N.G. disputed this claim, stating he was G.G.'s father and had cared for the child when mother previously was incarcerated. G.G.'s birth certificate and birth announcement named N.G. as the father, but subsequent DNA testing confirmed that C.R. is G.G.'s biological father.

On August 12, 2015, Santa Barbara County Department of Social Services (DSS) filed a dependency petition alleging, inter alia, that mother's substance abuse, untreated mental health issues and criminal history placed G.G. at a substantial risk of suffering serious physical harm or illness. The petition alleged that N.G.'s substance abuse and criminal history also placed G.G. at substantial risk of harm or illness. It alleged that N.G. was a registered sex offender for an out-of-state rape offense and had a criminal history of theft, forgery, battery on a spouse/cohabitant and driving under the influence. N.G. knew of mother's mental health and drug dependency issues, but failed to protect G.G. from mother because he was "'very busy' and did not know where to get help."

DSS recommended that G.G. remain in out-of-home care pending a jurisdictional hearing. N.G. reported that he was homeless and unemployed. He also admitted that he had used marijuana and methamphetamine within the last couple of days and would likely test positive for drugs.

The juvenile court ordered that G.G. remain detained and that he be placed in a foster home. The court ordered a minimum of four hours per week supervised visitation for mother and N.G. C.R., GG's biological father, declined to participate in the dependency case. C.R. recognized that N.G. was the only father that G.G. had known, stating that "I think [G.G.] believes [N.G.] is his father because he has been around since he was a baby."

On August 27, 2015, the juvenile court held a jurisdiction hearing. Mother, who was still in custody, objected to N.G.'s being named the presumed father to G.G. The court ordered DSS to prepare a disposition report and set a trial confirmation conference for jurisdiction and disposition.

DSS's disposition report recommended that G.G. remain in out-of-home care and that the court set a selection and implementation hearing pursuant to section 366.26. DSS requested that the court bypass family reunification services for mother and N.G. N.G. reported to a social worker that he continued to be homeless and had no income. On September 2, 2015, Lompoc Recovery Center advised that N.G. refused to test that day, and admitted to recent use of methamphetamine.

The disposition report stated that G.G. had a relationship with N.G, but was "also very bonded with the foster father in placement." N.G. was regularly visiting with G.G., until his visitation was suspended after his reported drug use. The

disposition report concluded that G.G. needed protection from his parents' lack of support, substance abuse and ongoing patterns of criminal activity.

At the contested jurisdiction and disposition hearing on September 11, 2015, the juvenile court found N.G. to be G.G.'s presumed father. It determined that G.G. was a person described by section 300 and that most of the allegations of the dependency petition were true. The court bypassed mother and N.G. for family reunification services. It observed that although N.G. did have a good relationship with G.G., N.G. was "actively using drugs, is transient, unemployed, and fragile." Visitation for mother was ordered as twice monthly, while visitation for N.G. was to be tapered off over three months.

DSS's section 366.26 report recommended that the parental rights of mother, presumed father N.G., and alleged father C.R. be terminated and that a permanent plan of adoption be formalized for G.G. The report described G.G. as happy, cheerful, and well-adjusted, without any symptoms of behavioral and emotional disorders. G.G. was considered adoptable based on his age, medical and developmental history, and observed and documented behaviors. The report identified prospective adoptive parents, who loved G.G. and were capable of meeting all of his needs. G.G. was warm and appropriately loving toward his foster fathers. He called them both "Daddy" and smiled when they gave him their attention.

Neither mother nor N.G. visited regularly with G.G. following the disposition and jurisdiction hearing. Mother had not visited the child since he was removed from her care. N.G. missed four visits in October and November 2015. DSS's report

concluded the most appropriate plan for G.G. was permanency planning services with a goal of adoption.

On January 7, 2016, the juvenile court held the selection and implementation hearing.<sup>2</sup> N.G. contested DSS's recommendation and the court set a trial confirmation conference. It also ordered that N.G. file an offer of proof.

N.G.'s offer of proof declared that he could present evidence that a beneficial parental relationship existed between him and G.G. The offer stated that N.G. would testify that he was regularly and thoroughly involved in the child's life from the time of his birth and that he had regular and positive visits with the child through the dependency case. The offer specifically listed observations of case aids during six supervised visits from September 21, 2015 to January 6, 2016. The observations consisted mostly of G.G.'s happiness at seeing N.G. and their warm interactions. On one occasion, for example, G.G. stated, "I love daddy and I give him lots of kisses like this."

On February 4, 2016, the juvenile court found that N.G.'s offer of proof was insufficient. The court acknowledged that G.G. and N.G. have "a fine relationship. [N.G.'s] been appropriate during visitation, but when I look at the need for permanency that the law says is preferred, the nature of the relationship, the offer of proof is not sufficient to warrant the hearing." The court found G.G. to be adoptable and terminated the parental rights of mother, N.G., and C.R. N.G. appeals.

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<sup>2</sup> C.R. appeared at the hearing. He was found to be G.G.'s biological father, but stated he did not wish to participate in reunification services and waived his presence at future hearings.

## DISCUSSION

N.G. contends that the juvenile court erred by denying his request for a contested evidentiary hearing under section 366.26 and argues that his offer of proof established the parental benefit exception to termination of parental rights. (§ 366.26, subd. (c)(1)(B)(i).) We disagree.

Section 366.26, subdivision (c)(1) requires the juvenile court to terminate parental rights if it finds by clear and convincing evidence that a child is likely to be adopted, unless the court finds a compelling reason for determining that termination would be detrimental to the child due to an enumerated statutory exception. The beneficial parental relationship exception of section 366.26, subdivision (c)(1)(B)(i) requires a showing of “regular visitation and contact” and “benefit” to the child from “continuing the relationship.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) A parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent, or that the parental relationship may be beneficial to the child only to some degree. (*Ibid.*) The parent must show that continuation of the parent-child relationship will promote “the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

The juvenile court has discretion to request an offer of proof regarding an enumerated exception to the termination of parental rights. (*In re Earl L.* (2004) 121 Cal.App.4th 1050, 1053.) “[T]he court can require an offer of proof to insure that

before limited judicial and attorney resources are committed to a hearing on the issue, [the parent] ha[s] evidence of significant probative value. If due process does not permit a parent to introduce irrelevant evidence, due process does not require a court to hold a contested hearing if it is not convinced the parent will present relevant evidence on the issue he or she seeks to contest.” (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122 [offer of proof regarding beneficial parental relationship exception].)

N.G.’s offer of proof represented that “[h]e was regularly and thoroughly involved in [G.G.’s] life from the time of his birth through removal,” and that “[h]e had regular visitation with [G.G.] throughout the pendency of this case and that the visits were consistently positive.” N.G. provided six examples of such visits, in which N.G. and G.G. warmly greeted each other and warmly said goodbye. For example, on October 23, 2015, when G.G. became aware of N.G.’s presence, he “ran to [N.G.’s] open arms and “[N.G.] gave [G.G.] a very warm and long hug. At the end of the visit [G.G. and N.G.] gave each other long warm hugs and kisses.”

We conclude the juvenile court did not err by denying N.G. a contested evidentiary hearing. The offer of proof claimed that N.G. regularly visited G.G. and that G.G. showed an attachment to him. But the offer did not set forth the actual evidence he would present to show that continuation of the parent-child relationship would promote “the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 229 [“To meet the burden of proof,

the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits”].) Most particularly, the offer did not address the court’s findings that N.G. was “actively using drugs, is transient, unemployed, and fragile.” Nor did it discuss the scheduled visits that he missed during the dependency. Under these circumstances, the court reasonably found that N.G.’s offer of proof was insufficient to warrant an evidentiary hearing.

In sum, we conclude that where, as here, a parent's offer of proof raises no relevant issue of contest at a section 366.26 hearing, the trial court is not obligated to conduct a full evidentiary hearing, and denial of a contested hearing violates neither the parent's statutory nor due process rights.

#### DISPOSITION

The judgment (order terminating parental rights and selecting adoption as the permanent plan) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Arthur A. Garcia, Judge  
Superior Court County of Santa Barbara

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Jamie A. Moran, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Michael C. Ghizzoni, County Counsel, and Ashley E. Flood,  
Deputy County Counsel, for Plaintiff and Respondent.